

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

CALVIN CUMMINGS, an individual , Plaintiff, vs. JOHN DOE 1-10, Individuals and SAFEWAY, INC., a foreign profit corporation. Defendant(s).	No. 21-2-08976-0 COMPLAINT FOR PERSONAL INJURIES AND DAMAGES
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COMES NOW the Plaintiff, CALVIN CUMMINGS, by and through his attorneys of record, Barry J. Wallis and Cambria Queen, of the Wallis Law Firm, PLLC, and for a cause of action against the above named Defendant as follows:

I. PARTIES

1.1 Plaintiff, CALVIN CUMMINGS, at all times material to this cause of action, was a resident and resided in King County, Washington.

COMPLAINT FOR PERSONAL INJURIES AND DAMAGES
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3 1.2 Defendants, SAFEWAY, INC., upon information and belief, at all times material
4 hereto is a foreign for profit corporation licensed to do business in United States, Washington,
5 organized pursuant to law, and was actively conducting business in King County, Washington.
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7 1.3 Defendants, JOHN DOE 1-10, upon information and belief, were employed by
8 and acting on behalf of their employer, SAFEWAY, INC.
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10 1.4 Defendant, SAFEWAY INC., as the employer of the remaining Defendants, is
11 vicariously liable for all acts of Defendants JOHN DOE 1-10 alleged herein.
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13 **II. JURISDICTION AND VENUE**

14 2.1 Jurisdiction: The superior courts of the State of Washington have jurisdiction
15 over the parties to and the subject matter of this litigation;
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17 2.2 Plaintiff, CALVIN CUMMINGS, is a resident of Auburn, King County,
18 Washington;
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20 2.3 Personal jurisdiction exists over Defendants SAFEWAY, INC., and JOHN DOES
21 1-10, as the "tortious act" and omissions giving rise to and causing the Plaintiff's injury claims
22 occurred in King County, Washington and because the Defendant, SAFEWAY, INC., conducts
23 business in Kent, King County, Washington. RCW 4.28.185(1)(b) and 4.28.185(1)(a).
24

25 2.4 Venue: Venue is properly placed in King County, Washington for this is the
county where the incident occurred pursuant to RCW 4.12.020(3) and because Defendant

1 transacts business in King County, Washington. Venue is also proper pursuant to RCW
2
3 4.12.025(1)(a).

4 **III. FACTS**

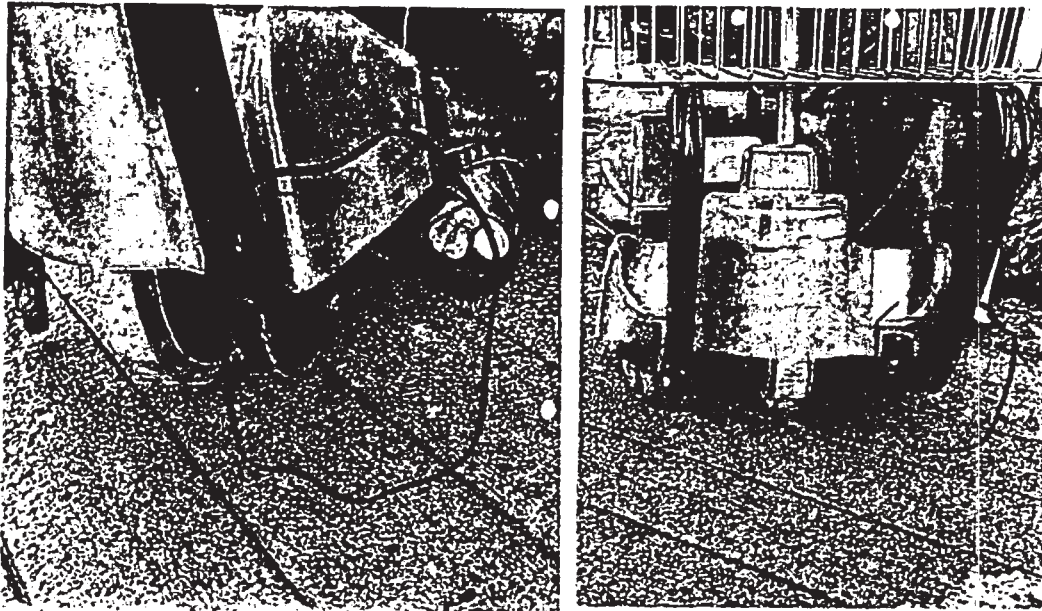
5 3.1 Paragraphs 1.1 through 2.4 above are incorporated herein by reference.

6 3.2 Date: The fall occurred on or about October 28, 2018.

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8 3.3 Invitee: At all times relevant and material to this lawsuit, Plaintiff, CALVIN
9 CUMMINGS, was a customer of SAFEWAY, INC., and frequented the premises for the purpose
10 of shopping for goods.

11 3.4 Details: On or about October 28, 2018, Plaintiff CALVIN CUMMINGS, went to
12 the Safeway store located at 13101 SE Kent-Kangley Road, Kent, Washington 98030, to get
13 some groceries. Prior to this date Calvin Cummings had surgery and his shoulder was in a sling
14 so he was unable to push a shopping cart. Calvin had to utilize one of Safeway's mobilized
15 scooters with a wire basket in front. There were no warning signs on or around the scooter,
16 except one which prohibited placing children in the basket. Calvin rode the scooter around the
17 store to do his grocery shopping for approximately 20 minutes without any issues. He remained
18 on the scooter the entire time, even at the cash register.

19
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21 3.5 Calvin remained on the scooter as he exited Safeway in order to load his groceries
22 into his friend's vehicle as his friend pulled up to the curb by Safeway's exit door. To his
23 complete surprise, when Calvin Cummings stepped off the scooter, it tipped over, and Calvin's
24 bad shoulder hit a square shaped pillar, and Calvin's head hit the ground. Calvin immediately
25 felt excruciating pain in his left shoulder, left ankle, and head after the fall.



3.6 Two Safeway employees, herein referenced as JOHN DOE 1-10 were outside when the scooter failed. One of the employees went in to get the manager, herein referenced as JOHN DOE 1-10, who came out to help Calvin and provide him with Safeway's insurance information.

3.7 Plaintiff was seen at Multicare Emergency Care in Covington, Washington. X-rays and a CT scan were taken. Over the next month, Calvin's symptoms persisted and he had a significant loss of function in his shoulder, his doctor ordered an MRI. MRI results revealed a failure of the rotator cuff repair after this fall with retearing of the supraspinatus, infraspinatus, and subscapularis with significant retraction of the tendons. It appeared to Calvin's doctors that the tears were likely irreparable. She referred Calvin to a specialist who recommended the best treatment option for Calvin was a reverse TSA (total shoulder arthroplasty). Further examinations revealed a left shoulder massive cuff tear with subscapularis deficiency and

1 pseudoparalysis. Calvin's shoulder felt extremely weak, had very little function, was extremely
2 painful and felt like it was going to slip in and out of place. He was unable to move it or use it.
3 It was affecting all his daily life activities. Left with no other options and extremely frustrated
4 with the persistent pain he was experiencing and his failure to respond to alternative non-surgical
5 methods, Calvin agreed to have the surgery.
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8 3.8 On November 6, 2019, Calvin underwent surgery for a left shoulder arthroscopic
9 debridement and removal of foreign bodies and revision subscapularis repair. During the
10 surgery, the surgeon noted the subscapularis was completely torn, the supraspinatus and
11 infraspinatus were also fully torn with retraction medial to the glenoid.
12



21 3.9 Calvin's post-operative treatment included sling immobilization, anti-
22 inflammatories, ice and activity restriction, physical therapy, strengthening and stretching
23 exercises. Calvin has made very slow progress with his healing, and his doctor felt it was highly
24 unlikely Calvin would be able to return to full time work with King County Metro.
25

1 3.10 Calvin's future prognosis and treatment is unknown at this time. The unnecessary
2 fall and events following caused severe physical and psychological damage and emotional
3 distress to Plaintiff CALVIN CUMMINGS.
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5 3.11 Plaintiff CALVIN CUMMINGS suffered personal injuries, including, but not
6 limited to, completely torn subscapularis, supraspinatus and infraspinatus shoulder tendons,
7 shoulder pain and ankle pain, significant pain and suffering, months of treatment, loss of earning
8 capacity and severe physical and emotional distress. All of these injuries were a direct and
9 proximate cause of the Defendants' tortious conduct.
10

11 **IV. TORTIOUS CONDUCT AND PROXIMATE CAUSE**

12 4.1 Plaintiff, CALVIN CUMMINGS, re-alleges and incorporates by reference
13 paragraphs 1.1 through 3.11.
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15 4.2 Duties of SAFEWAY, INC., on the date of the alleged occurrence, SAFEWAY,
16 INC., was under the ownership, control, and supervision, management, care and maintenance of
17 itself and the other defendants. The Defendant, directly and through its agents, servants and
18 employees, owed Plaintiff a duty to provide and maintain safe premises for the benefit of its
19 invitees. It is undisputed that Plaintiff was an invitee. Washington's Supreme Court defined a
20 business invitee in *McKinnon v. Washington Fed. Sav. & Loan Ass'n*, 68 Wn.2d 644, 649, 414
21 P.2d 773 (1996) as follows:
22

23 [O]ne who is either expressly or impliedly invited onto the premises of another
24 for some purpose connected with the business in which the owner or occupant
25 is then engaged. To qualify as an invitee or business visitor under this
definition, it must be shown that the business or purpose for which the visitor
comes upon the premises is of actual or potential benefit to the owner or
occupier thereof.

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2 A landowner's duty to a business invitee requires the land owner to use ordinary care to
3 maintain the premises in a reasonably safe condition. Washington courts have adopted the
4 Restatement (Second) of Torts §343 (1965) with regard to a landowner's duty to an invitee. It
5 provides:
6

7 A possessor of land is subject to liability for physical harm caused to his/her
8 invitees by a condition on the land if, but only if, he/she

9 (a) Knows or by the exercise of reasonable care would discover the condition, and
10 should realize that it involves an unreasonable risk of harm to such invitees, and

11 (b) Should expect that they will not discover or realize the danger, or will fail to
12 protect themselves against it, and

13 (c) Fails to exercise reasonable care to protect them against danger.

14 See also *Tincani v. Zoological Society*, 124 Wn.2d 121, 138, 875 P.2d 621 (1994).

15 The duty owed to a tenant and/or invitee has been further explained as follows:

16 [A tenant and/or invitee] enters upon an implied representation or assurance that
17 the land has been prepared and made ready and safe for his reception. He is
18 therefore entitled to expect that the possessor will exercise reasonable care to make
19 the land safe for his entry, or for his use for the purposes of the invitation. He is
20 entitled to expect such care not only in the original construction of the premises,
21 and any activities of the possessor or his employees which may affect their
condition, but also in inspection to discover their actual condition and any latent
defects, followed by repair, safeguards, or warnings as may be reasonably
necessary for his protection under the circumstances.

22 *Mucsi v. Graoch Associates Ltd. Partnership No. 12*, 144 Wn.2d 847, 855, 31 P.3d 684

23 (2001); *Degel v. Majestic Mobil Manor, Inc.*, 129 Wn.2d 43, 53, 914 P.2d 728 (1996);

24 Restatement (Second) of Torts §343 cmt. b.
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1 The duty owed to an invitee and/or tenant is more than passively refraining from
 2 negligent acts. The possessor and/or landlord has a duty of affirmative conduct, requiring he
 3 or she to exercise reasonable care to inspect and repair the premises. *McCutcheon v. United*
 4 *Homes Corporation*, 79 Wn.2d 443, 445, 486 P.2d 1093 (1971); *Tincani*, 124 Wn.2d at 139.
 5 This constitutes an affirmative duty to discover dangerous conditions. *Edge-Nessen v. Crystal*
 6 *Mountain*, 43 Wn.2d 127, 132, 600 P.2d 1214 (1980). As the owner or occupier, Safeway Inc.,
 7 had a duty to exercise ordinary care to maintain in a reasonably safe condition those portions of
 8 the premises that such person was expressly or impliedly invited to use or might reasonably be
 9 expected to use. Additionally, Safeway, Inc., failed in its duty to its invitees and is liable for
 10 Plaintiff's injuries caused by the condition of the motorized scooter on their premises.
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 13 4.3 Breach: Defendant, SAFEWAY, INC., breached their duties to the Plaintiff as set
 14 forth in paragraphs 3.1 through 4.2.
 15

16 4.4 Within Scope of Employment: The employees and manager of SAFEWAY, INC.
 17 were employees of SAFEWAY INC. and was operating within his/her scope of employment at
 18 the time of Plaintiff's fall incident. Defendant is vicariously liable for the actions and inactions
 19 of its employees to maintain safe equipment for customer use, particularly the manager in charge
 20 of the Safeway store where the incident occurred.
 21

22 4.5 Proximate Cause: Plaintiff CALVIN CUMMINGS injuries were a direct and
 23 proximate cause of multiple potential sources of tortious conduct of SAFEWAY, INC.,
 24 including, but not limited to, breach of its duties as set forth in paragraphs 3.1 through 4.4.
 25 Depending on the weight and admissibility of the specific facts of this claim; this case may be

1 legally defined as a personal injury claim, a premises liability claim, one or partially any of these
2 claims, or all of these claims.

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4 4.6 Tortious Conduct: SAFEWAY, INC., is a corporation having an independent
5 duty of care to its invitees. A corporation can act only through its officers, employees, and
6 agents. Any act or omission of an employee, or agent is the act or omission of the corporation.
7 Failure to exercise such care is negligence. SAFEWAY, INC., acting through it's officers,
8 employees or agents, owed their customer, Plaintiff CALVIN CUMMINGS, a duty of care to
9 protect Plaintiff from foreseeable harm while shopping and at their facility. On or about October
10 28, 2018, Defendants breached their duty of care when they failed to protect Plaintiff CALVIN
11 CUMMINGS by maintaining the portions of their premises, specifically the motorized scooter,
12 that Plaintiff CALVIN CUMMINGS was expressly or impliedly invited to use or might
13 reasonably be expected to use. Additionally, SAFEWAY, INC., failed in its duty to its invitee,
14 Plaintiff CALVIN CUMMINGS, and is liable for Plaintiff's injuries, caused by the condition of
15 the motorized scooter on their premises.

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17 4.7 Negligent Infliction of Emotional Distress: As a direct result of Defendant's
18 willfull, knowing and intentional acts, Plaintiff CALVIN CUMMINGS has suffered severe
19 emotional and mental anguish.

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21 4.8 Any or all of the above are potential elements of tortious acts or conduct on behalf
22 of Defendant SAFEWAY, INC. If any of the elements set forth above are found to be
23 inappropriate to the claimed cause of action, plaintiff reserves the right to amend any element or
24 rely upon remaining elements.
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V. NO COMPARITIVE FAULT

5.1 Plaintiff is without negligence of any kind or nature whatsoever in this case and did not contribute to his own injuries or damages in any way.

VI. RESERVATION OF RIGHTS

6.1 Plaintiff CALVIN CUMMINGS hereby reserves the right to amend this Complaint and/or the Defendants identified herein as allowed by statute, court rule, and case law and as additional facts are obtained through ongoing investigation and discovery.

VII. LIMITED MEDICAL WAIVER

7.1 Plaintiff CALVIN CUMMINGS hereby waives the physician-patient privilege ONLY to the extent required by RCW 5.60.060, as limited by the plaintiff's constitutional rights of privacy, contractual rights of privacy, and the ethical obligation of physicians and attorneys not to engage in *ex-parte* contact between a treating physician and the patient's legal adversaries.

VIII. CLAIMS AND DAMAGES

8.1 As a direct and proximate result of the tortious acts and omissions of Defendants, Plaintiff CALVIN CUMMINGS was injured, suffered and continues to suffer physical disability and pain, emotional trauma, medical expenses, and other damages.

WHEREFORE, Plaintiff prays for judgment against the Defendants, jointly and severally, in an amount to be proven at trial that will compensate Plaintiff for all damages sustained.

VIII. PRAYER FOR RELIEF

Plaintiff humbly requests a judgment against Defendants as follows:

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1. That plaintiff be awarded general and special damages against defendants in an amount to be proven at trial for the defendants tortious acts and omissions, including negligent infliction of emotional distress, to include past and future medical expenses and other health care expenses; past and future loss of earnings; permanent partial impairment of earnings and earning capacity; past and future physical, mental and emotional pain and suffering; past and future permanent partial disability; loss of enjoyment of life and for reduction of life expectancy; past and future special damages; and interest calculated at the maximum amount allowable by law, including prejudgment interest; and other recoverable non-economic damages.

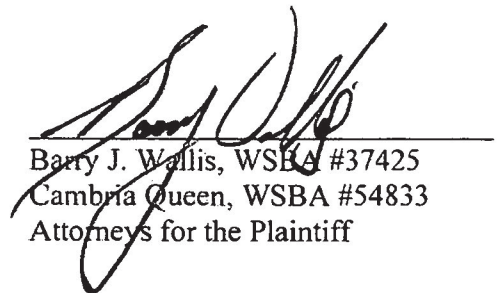
2. For a judgment against the Defendants of liability in favor of the Plaintiff against the Defendants; an award of damages in favor of the Plaintiff against the Defendants in an amount to be proven at the time of trial;

3. For attorney's fees, costs, and disbursements;

4. For such other and further relief as the Court deems just and equitable.

DATED this 8TH day of July, 2021.

WALLIS LAW FIRM, PLLC



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Attorneys for the Plaintiff